
(2014) 12 AHC CK 0189
In the Allahabad High Court
Case No : Case No. 3786 of 2007

Satish Kohli and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 181, 181(2), 181(4), 200, 202
Penal Code, 1860 (IPC) — Section 406, 420, 498-A

Citation : (2015) 88 ALLCC 870

Hon'ble Judges : Vishnu Chandra Gupta, J

Bench : Single Bench

Advocate : P.C. Agrawal, Arun Sinha and Sameer Kumar, Advocates for the Appellant

Judgement

Vishnu Chandra Gupta, J.—By means of present petition under section 482 Code of Criminal Procedure (for short Cr.P.C.) the petitioners have prayed for quashing the impugned order dated 23.4.2007 passed by Judicial Magistrate-II, Lucknow in Complaint Case No. 768 of 2007 (Case No. 1131 of 2007), (Smt. Sweta Kohli v. Satish Kohli and others) under sections 406 and 420 IPC, P.S., Hazaratganj, District Lucknow, whereby the petitioners have been summoned under sections 420 and 406 I.P.C. to face trial and also the consequential proceedings pending in the Court of Judicial Magistrate-II, Lucknow. In this petition, impugned order and continuance of proceeding initiated in pursuance thereof have been challenged on two counts.-

"1. That learned Magistrate has no jurisdiction to entertain the complaint as no part of cause of action arises within the territorial limits of Court at Lucknow.

2. That on the basis of allegations made in the complaint neither offence under section 420 I.P.C. nor under section 406 I.P.C. is made out."

2. Brief facts for deciding this petition are that a complaint has been filed by opposite party No. 2- Smt. Sweta Kohli against petitioners- Satish Kohli and Smt.

Neena Kohli and two others, namely, Amar Nath Kohli and Km. Amisha Kohli with allegations that marriage of opposite party No. 2 was solemnized on 12.12.2002 with Gaurav Kohli according to Hindu rites and rituals in Kamal Palace Hotel, Jalandhar (Punjab). In the marriage sufficient dowry i.e. a Maruti Zen Car, Air conditioner, ornaments, cloths and other household goods were given by the father of opposite party No. 2, as per list annexed as Annexure No. 1 to the complaint. Earlier to it, on 28.10.2001 engagement ceremony was held in Utsav Hotel Madhuvan, Dehradun (Uttarakhand). In the engagement ceremony the father of opposite party No. 2 gave costly gifts to Gaurav Kohli and his relatives. The ornaments and other belongings of opposite party No. 2 including gifts with ornaments given by in-laws in face showing ceremony were kept by her in-laws, the list of which has been annexed as Annexure No. 2 to the complaint. It is also in the complaint that articles mentioned in both lists are Stridhan of opposite party No. 2. It is also alleged therein that no cohabitation took place in between opposite party No. 2 and her husband Gaurav Kohli. The reason came to the knowledge after marriage that Gaurav Kohli was suffering from heart disease before marriage and the in-laws concealed this fact with intent to grab the money and other items given in the marriage and engagement ceremony. On 25.8.2004 Gaurav Kohli fell ill. He was admitted in Indraprasth Apolo Hospital, New Delhi but without medical advice and complete treatment, he got discharged by his parents. He was again fell ill and was admitted in Indraprasth Apolo Hospital, New Delhi on 9.6.2006. She paid Rs. 10,000/- for admission of her husband Gaurav Kohli, but he again discharged at the behest of his parents without completing his treatment and without taking medical advice on 18.6.2006, The parents of Gaurav Kohli did not pay requisite expenditure of his treatment. Opposite party No. 2 was serving in a Multi National Company at Noida. The employer of opposite party No. 2 provided insurance cover to opposite party No. 2 and his husband, the premium of which was paid out of her salary. The expenses incurred in the treatment of Gaurava Kohli to the extent of Rs. 3,00,000/- was paid by her from insurance money. Her husband passed away on 21.6.2006 for want of proper treatment. His last rites took place on 24.6.2006. Thereafter petitioners expelled her in wearing cloths. When she demanded her Stridhan in presence of Dr. J.L. Soori, Jai Kumar Soori and her parents, the petitioners refused to return the same. Thereafter, she was compelled to come back Lucknow to reside with her parents. It is also alleged that accused persons Satish Kohli and Amarnath Kohli fraudulently got some life insurance policies of Gaurav Kohli concealing his ailment. After death of Gaurav Kohli, the amount under some life insurance policies have been taken by the petitioners but some of them are still to be paid.

3. Learned Magistrate after recording the statement of complainant and witnesses under sections 200 and 202 Cr.P.C. passed the order impugned.

4. Heard Shri P.C. Agarwal, learned Counsel for the petitioners and Shri Izhar Husain, learned A.G.A. None appeared for the opposite party No. 2 though she is represented through Shri Arun Sinha, Advocate.

5. No counter-affidavit has been filed from the side of opposite party No. 2 in spite of sufficient service upon her.

6. The learned Counsel for the petitioners urged that from the allegations contained in the complaint and evidence recorded under sections 200 and 202 Cr.P.C., it is crystal clear that engagement ceremony was conducted at Dehradun. The marriage took place at Jalandhar. Gaurav Kohli fell ill in Delhi and admitted in Delhi. Opposite party No. 2 served in Multi National Company at Noida. She demanded her Stridhan at Jalandhar. The refusal also took place at Jalandhar. She left her matrimonial home at Jalandhar on 24.6.2006 and started residing at Lucknow. In view of the above, it cannot be said that any part of cause of action arises within the territorial jurisdiction of Court at Lucknow.

7. Learned Counsel for the petitioners after relying upon the judgments of Hira Lal Chaudhary and Others Vs. State, , and Ramesh Chand Verma Vs. Bhagat Ram, Court, submitted that in view of section 181(2) of old Cr.P.C. which is equivalent to new provisions of section 181(4) no part of cause of action arises for the alleged criminal breach of trust within the territorial limits of Court at Lucknow. It is further submitted that provisions of section 181(4) of Cr.P.C. are specially meant for the offence of criminal breach of trust or criminal misappropriation, which runs as follows:--

"Section 181- Place of trial in certain offences

1.....

2.....

3.....

"(4) Any offence of criminal misappropriation or criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person."

8. In view of the aforesaid provisions, the property subject to offence alleged to have been received by accused persons either at Dehradun or at Jalandhar. Such properties were alleged to have been retained by the accused persons at Jalandhar and the same was required to be returned at Jalandhar, or accounted for at Jalandhar.

9. The Apex Court in Harpreet Singh Ahluwalia v. State of Punjab 2009 (7) ACC 712, has held that if no part of cause of action arises for the offence of cheating or criminal breach of trust against the accused within the territorial limits of Court taking cognizance, the High Court should have exercised its jurisdiction under section 482 Cr.P.C. and quashed the proceedings. Similar view has been taken by the Apex Court in Kushal Kumar Gupta and Another Vs. Mala Gupta, , and in Bhura Ram and Others Vs. State of Rajasthan and Another, , In the cases

referred to herein above, the Supreme Court quashed the proceedings under sections 498-A and 406 I.P.C. on ground of lack of territorial jurisdiction, considering the judgment of Apex Court in Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, .

10. In the judgment delivered by this Court (Myself-Vishnu Chandra Gupta, J.) in Anil Kumar Shukla and Another Vs. State of U.P., similar view has been propounded.

11. In view of the above, I am of the firm view that no cause of action arose within the territorial limits of Court at Lucknow, as per the allegations made in the aforesaid complaint filed by the opposite party No. 2.

12. Whether offence under sections 406 and 420 IPC are made out or not from the allegations made in the complaint and evidence recorded in inquiry under sections 200 and 202 Cr.P.C, I am of the view that when this Court is of opinion that Court at Lucknow has no territorial jurisdiction to try and decide the present complaint, there is no necessity to delve upon this controversy by this Court.

13. Having considered the facts and circumstances of the case as well as the judgments referred to herein above, this petition deserves to be allowed on the ground of lack of territorial jurisdiction of Court at Lucknow. The impugned summoning order dated 23.4.2007 passed by the Judicial Magistrate-II, Lucknow in Complaint Case No. 768 of 2007 along with all consequential proceedings initiated in pursuance thereof are liable to be quashed.

14. Consequently, this petition is allowed. The impugned order summoning the petitioners dated 23.4.2007 passed by the Judicial Magistrate-II, Lucknow in Complaint Case No. 768 of 2007 along with all consequential proceedings initiated in pursuance thereof are quashed. However, liberty is given to opposite party No. 2 to file the complaint before the Court having jurisdiction to entertain the same.